



IN THE MATTER OF:

LUCIA RADYCKI,

Complainant,

and

**STARK CARPET, INC.,
ROBERT GOULD and
NICKOLAS LACALAMITA, MANAGERS**

CHARGE: 2002CA3254

EEOC NO: 21BA22691

ALS NO: 12117

Respondent.

RECOMMENDED ORDER AND DECISION

This matter comes on to be heard pursuant to Respondent's, Stark Carpet, Inc.'s, et. al (Stark's) Motion to Dismiss, and Complainant's Motion to Extend the Hearing Date & Clarify Case Status. Complainant filed a response to the Motion to Dismiss, and Respondent filed a response to the Motion to Extend the Hearing Date & Clarify Case Status. This matter is ready for decision.

Statement of the Case

On June 14, 2002, Complainant filed a charge of discrimination with the Illinois Department of Human Rights (Department), alleging that Respondent discharged him due to his age, in violation of the Illinois Human Rights Act (Act). The parties signed an agreement, extending the 365-day period during which the

Department has to act on the charge, to October 12, 2003. However, Complainant filed a complaint with the Illinois Human Rights Commission on July 10, 2003. The Department issued a Notice of Dismissal on the present charge on July 17, 2003. Complainant filed a timely Request for Review with the Department.

Findings of Fact

The following facts are based upon the record:

1. On June 14, 2002, Complainant filed a charge of discrimination with the Illinois Department of Human Rights.
2. On May 22, 2003, the parties signed an extension of time, lengthening the 365-day period during which the Department has to act on the charge, to October 12, 2003 (a 120-day extension).
3. Complainant filed a complaint with the Commission on July 10, 2003.
4. The Department issued a Notice of Dismissal on the present charge on July 17, 2003. Complainant filed a timely Request for Review with the Department.

Conclusions of Law

1. The Commission has jurisdiction over the parties hereto and the subject matter herein.

2. Complainant is a person claiming to have been aggrieved by a violation of the Illinois Human Rights Act (Act).

3. Respondent is an “employer” within the meaning of the Act and subject to its provisions.

4. Section 7A-102(G)(1) of the Illinois Human Rights Act, requires the Department, within 365 days after a charge has been properly filed, to file a Complaint with the Commission or to order that no Complaint be issued, and dismiss the Charge with prejudice without any further right to proceed. However, if the parties agree in writing to extend the jurisdictional filing then that extra time extends the 365-day jurisdictional period. (775 ILCS 5/7A-102 (G)(1) (2000).

Discussion

Section 7A-102(G)(1) of the Illinois Human Rights Act, requires the Department, within 365 days after a charge has been properly filed, to file a Complaint with the Commission or to order that no Complaint be issued, and dismiss the Charge with prejudice without any further right to proceed. However, if the parties agree in writing to extend the jurisdictional filing then that extra time extends the 365-day jurisdictional period. (775 ILCS 5/7A-102 (G)(1) (2000).

The Act also states:

Between 365 and 395 days after the charge is filed, **or such longer period agreed to in writing by all parties**, the aggrieved party may file a complaint with the Commission, if the Director has not sooner issued a report and determination pursuant to paragraphs (D)(1) and (D) (2) of this Section. The form of the complaint shall be in accordance with

the provisions of paragraph (F). **The aggrieved party shall notify the Department that a complaint has been filed and shall serve a copy of the complaint on the Department on the same date that the complaint is filed with the Commission.**¹

(775 ILCS 5/7A-102 (G)(2) (2000), *emphasis added*).

In the case at bar, Complainant filed her charge of discrimination with the Department on June 14, 2002. Therefore, the Department had until June 14, 2003 to act on that charge. On May 22, 2003, the parties agreed to extend the 365-day time limit for the Department to act on the charge by 120 days. As such, the Department had until October 12, 2003 to take action. On July 17, 2003 the Department issued a Notice of Dismissal of the charge.

However, Complainant filed a complaint with the Commission on July 10, 2003, well before the Department's time to act on the charge had expired, and now seeks to circumvent that dismissal and proceed on her self-filed complaint. Complainant argues that the Department did not "certify" the extension, so it is invalid. The Act does not require an extension to be certified by the Department, the agreement of the parties is sufficient. If an aggrieved party files a Complaint either before or after the thirty-day time period granted by 775 ILCS 5/7A-102 (G)(2), that Complaint is a nullity and the Commission has no jurisdiction over it, Lee & Blue Cross Blue Shield of Illinois, 2000 ILHUM LEXIS 19 (June 13, 2000). Contrary to Complainant's contention, Lee does not stand for the proposition that an extension of the 365-day period must be certified by the Department.

Further, Complainant's argument that the agreed upon extension must be certified by the Department, as orders are in circuit court are signed by a judge,

¹ There is no proof of service attached to the complaint indicating that the Department has been served.

is without merit. The Department is not a court of law, and no judge administers or adjudicates the investigation of charges of discrimination filed there.

Complainant also asserts that she withdrew her agreement to extend, thus invalidating it. Again, contrary to Respondent's contention, Complainant's July 8, 2003 letter to the Department (*Exhibit 4, attached to Complainant's Memorandum and Response To Respondent's Motion to Dismiss*) does not constitute a rescission. That letter contains no language to that effect.

Finally, and also contrary to Complainant's contention, the final sentence of 775 ILCS 5/7A-102 (G)(1), does not state that an order regarding an extension of the 365 day period must be issued by the Department. That section states:

When a charge of a civil rights violation has been properly filed, the Department, within 365 days thereof or within any extension of that period agreed to in writing by all parties, shall either issue and file a complaint in the manner and form set forth in this Section or shall order that no complaint be issued and dismiss the charge with prejudice without any further right to proceed except in cases in which the order was procured by fraud or duress. Any such order shall be duly served upon both the complainant and the respondent.

Clearly, the final sentence is referring to a Notice of Dismissal.

The Commission's procedure upon finding a Complainant filed Complaint untimely is to dismiss the Complaint without prejudice and recognize the Department has jurisdiction over the underlying matter for further processing of the Charge. Lee, *supra*. Finally, due to the discussion above, Complainant's Motion to Extend the Hearing Date & Clarify Case Status is moot.

Recommendation

Based upon the reasons stated above, I recommend that the present complaint and underlying charge of discrimination against Stark Carpet, Inc., et. al be dismissed without prejudice.

HUMAN RIGHTS COMMISSION



BY:

WILLIAM H. HALL, IV
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: November 21, 2003